

STATE OF MICHIGAN
COURT OF APPEALS

LOREN L. ROBERTS,

Plaintiff-Appellee,

v

SUBURBAN MOBILITY AUTHORITY FOR
REGIONAL TRANSPORTATION, d/b/a
SMART,

Defendant-Appellant,

and

STATE OF MICHIGAN,

Defendant.

UNPUBLISHED

April 1, 2010

No. 286051

Wayne Circuit Court

LC No. 07-717443-CZ

Before: SERVITTO, P.J., and BANDSTRA and FORT HOOD, JJ.

PER CURIAM.

Defendant Suburban Mobility Authority for Regional Transportation, d/b/a SMART,¹ appeals as of right from the trial court's denial of its motions for summary disposition. We reverse and remand for entry of summary disposition in favor of defendant. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff boarded defendant's bus and fell to the floor as the bus started to move. Plaintiff filed suit, and defendant filed two motions for summary disposition. The first motion alleged that plaintiff failed to give adequate written notice; the second motion alleged that defendant had not acted negligently and was entitled to governmental immunity. The trial court denied both motions.

The trial court's decision regarding a motion for summary disposition is reviewed de novo. *Kuznar v Raksha Corp*, 481 Mich 169, 175; 750 NW2d 121 (2008). Questions of

¹ Defendant State of Michigan is not a party to this appeal.

statutory interpretation present questions of law subject to de novo review. *Hunter v Hunter*, 484 Mich 247, 257; 771 NW2d 694 (2009). The language of the statute expresses the legislative intent. *Dep't of Transportation v Tomkins*, 481 Mich 184, 191; 749 NW2d 716 (2008). The rules of statutory construction provide that a clear and unambiguous statute is not subject to judicial construction or interpretation. *Id.* When a statute plainly and unambiguously expresses the legislative intent, the role of the court is limited to applying the terms of the statute to the circumstances in a particular case. *Id.* Applying the plain language rule, the statute's use of the term "shall" denotes mandatory rather than permissive action. See *AFSCME v Detroit*, 267 Mich App 255, 261; 704 NW2d 712 (2005).

Defendant alleges that the trial court erred by denying its motion for summary disposition on the issue of notice. We agree.

MCL 124.419 reads:

All claims that may arise in connection with the transportation authority shall be presented as ordinary claims against a common carrier of passengers for hire: Provided, That written notice of any claim based upon injury to persons or property shall be served upon the authority no later than 60 days from the occurrence through which such injury is sustained and the disposition thereof shall rest in the discretion of the authority and all claims that may be allowed and final judgment obtained shall be liquidated from funds of the authority: Provided, further, That only the courts situated in the counties in which the authority principally carries on its function are the proper counties in which to commence and try action against the authority.

The statute requires that "written notice of any claim based upon" an injury "shall be served upon the authority no later than 60 days from the occurrence" which resulted in the injury. A "claim" is defined as "[t]he aggregate of operative facts giving rise to a right enforceable by a court." *Woodman v Kera, LLC*, 280 Mich App 125, 163 n 3; 760 NW2d 641 (2008), quoting Black's Law Dictionary (7th ed), p 240. The term "written" is defined as "expressed in writing (disting. from *spoken*)." Webster's College Dictionary (10th ed), p 1511. Further, "writing" is defined as "[a]ny intentional recording of words in a visual form, whether in the form of handwriting, printing, typewriting, or any other tangible form." Black's Law Dictionary (8th ed), p 1641.

Plaintiff's only contact with defendant within the 60-day notice period, with the exception of plaintiff's oral report to the bus driver, was the telephone call. Plaintiff believed that defendant's representative took notes during the call, and that the notes would be transcribed into a report. In the call, plaintiff stated that he had fallen on the bus and had suffered injury to his knee. Plaintiff's statements put defendant on notice that an incident had occurred, but failed to give defendant any reason to believe that he would file suit. If anything, plaintiff's statements reassured defendant that, while what happened on the bus was unfortunate, the bus driver had not been at fault. Thus, defendant had notice of an occurrence involving plaintiff, but did not receive notice of a claim, as that term is defined, made by plaintiff. When a plaintiff fails to serve written notice of a claim upon the defendant within 60 days of the accident in accordance with the rules of service of process set forth in the court rules, the plaintiff does not satisfy the notice requirements of MCL 124.419. See *Nuculovic v Hill*, ___ Mich App ___; ___ NW2d ___

(2010).² The trial court erred by denying defendant's motion for summary disposition on the issue of notice.³

We reverse the trial court's denial of defendant's motion for summary disposition and remand for entry of summary disposition in favor of defendant.

Reversed and remanded. We do not retain jurisdiction.

/s/ Deborah A. Servitto

/s/ Richard A. Bandstra

/s/ Karen M. Fort Hood

² See Docket No. 280216, slip op pp 4-6.

³ In light of our holding, defendant's motion for summary disposition regarding the issues of negligence and governmental immunity is moot. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221; 761 NW2d 293 (2008).